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IN THE

Supreme Court of the United States

October Term, 1953

No. 10 Original.

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CITY OF SAN DIEGO, and COUNTY OF SAN DIEGO,

Defendants.

UNITED STATES OF AMERICA,

Intervener.

Response of California Defendants to the Motion on Behalf of the State of Nevada for Leave to Intervene

and

Answer of California Defendants to Petition of Intervention on Behalf of the State of Nevada.

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Second Affirmative Defense—Defendants have appropriative rights, recognized by the Boulder Canyon Project Act and protected by the Statutory Compact between the United States and California, to the beneficial consumptive use in California of not less than 5,362,000 acre-feet of Colorado River System water per annum, senior to the claims made by Nevada in that State's Petition of Intervention, with certain exceptions 5

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Defendants.

UNITED STATES OF AMERICA,

Intervener.

RESPONSE OF CALIFORNIA DEFENDANTS TO THE MOTION ON BEHALF OF THE STATE OF NEVADA FOR LEAVE TO INTERVENE.

The defendants above named have no objection to the granting of the motion on behalf of the State of Nevada for leave to intervene.

The defendants note that the motion and Petition refer to the "Colorado River" in some instances and to the "Colorado River System" in others. It is assumed, in this Response and in the accompanying Answer, that the Colorado River System is meant by the references to the Colorado River.

The signatures on behalf of the defendants appear at the close of their Answer.

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Defendants.

UNITED STATES OF AMERICA,

Intervener.

ANSWER OF CALIFORNIA DEFENDANTS TO PETITION OF INTERVENTION ON BEHALF OF THE STATE OF NEVADA.

Defendants State of California, Palo Verde Irrigation District, Imperial Irrigation District, Coachella Valley County Water District, The Metropolitan Water District of Southern California, City of Los Angeles, California, City of San Diego, California, and County of San Diego, California, by their duly authorized attorneys, jointly Answer the Petition of Intervention on Behalf of the State of Nevada as follows:

Incorporation of Appendixes by Reference.

1.

Defendants refer to their "Appendixes to the Answer" to Arizona's Bill of Complaint, and incorporate those Appendixes by reference as a part of their present Answer to the Petition of Intervention on Behalf of the State of Nevada, as though the same were here set out at length.

FIRST AFFIRMATIVE DEFENSE.

Defendants Have the Right to the Beneficial Consumptive Use in California of 5,362,000 Acre-feet Per Annum of Waters of the Colorado River System Under the Colorado River Compact, the Boulder Canyon Project Act, the Statutory Compact Between the United States and California, and the Contracts of the Secretary of the Interior Executed Pursuant Thereto.

2.

The defendants incorporate by reference, as though here fully stated at length, as a part of this Answer to the Petition of Intervention of the State of Nevada, all of the allegations of the First Affirmative Defense of their Answer to the Petition for Intervention of the United States of America.

3.

The rights of Nevada as a third party beneficiary of the Statutory Compact between the United States and California are governed by that Compact as interpreted, construed and applied by the principal parties thereto, as alleged in Defendants' Answer to the Petition for Intervention of the United States, and said State cannot lawfully assert rights inconsistent therewith.

SECOND AFFIRMATIVE DEFENSE.

Defendants Have Appropriative Rights, Recognized by the Boulder Canyon Project Act and Protected by the Statutory Compact Between the United States and California, to the Beneficial Consumptive Use in California of Not Less Than 5,362,000 Acre-feet of Colorado River System Water Per Annum, Senior to the Claims Made by Nevada in that State's Petition of Intervention, With Certain Exceptions.

4.

Incorporation by Reference.

The defendants incorporate by reference, as though here fully stated at length, as a part of this Answer to the Petition of Intervention on Behalf of the State of Nevada, all of the allegations of the Second Affirmative Defense contained in the Answer of these defendants to the Petition for Intervention of the United States of America.

5.

California's Appropriations Are Senior to Nevada's.

All of the appropriations of defendants above alleged are senior in time and right to all claims of Nevada for the consumptive use of waters of the Colorado River System with the partial exception of certain beneficial consumptive uses which may have been initiated by users in Nevada prior to one or more of the dates of the initiation of defendants' appropriative rights. The exact quantities of such uses are unknown to the defendants, but, upon information and belief, defendants allege that the quantities thereof are not sufficient to interfere with the fulfillment of the appropriative rights of the defendants as such rights are recognized by the Boulder Canyon Project Act and the Statutory Compact between the United States and California.

TRAVERSE.

6.

Answering Paragraph I of said Petition, admit the allegations of said paragraph except that, with respect to the allegations contained in the last subparagraph thereof, allege that defendants have not sufficient information or belief to enable them to answer.

7.

The allegations of Paragraph II of said Petition do not appear to require answer by the defendants.

8.

Answering Paragraph III of said Petition, admit all the allegations thereof.

9.

Answering Paragraph IV of said Petition, admit that the State of Nevada is a signatory State of the Colorado River Compact and is one of the States of the Lower Basin thereunder. As to beneficial consumptive use of waters of the Colorado River System available to Nevada, reference is made to Paragraphs 12, 13 and 14 of this Answer. Admit that the Colorado River Compact, proclaimed by the President June 25, 1929, as a Six-State Compact among the States of California, Colorado, Nevada, New Mexico, Utah and Wyoming as alleged in Paragraphs III and IV of Nevada's Motion for Leave to Intervene, was intended to be, and now is, binding and obligatory upon the said six States, and will be so until the said Compact is terminated by the unanimous

agreement of said six States. Except as specifically admitted herein, deny all allegations of Paragraph IV.

10.

Answering Paragraph V of said Petition, admit all the allegations thereof except that, with respect to the allegation that the State of Nevada has the right to the beneficial consumptive use of water under Article III(a) of the Colorado River Compact in the amount of 539,100 acre-feet per annum for present and future agricultural and domestic uses, allege that defendants are without information or belief sufficient to enable them to answer, and placing their denial upon that ground, deny said allegation. The defendants' position as to the rights of Nevada is stated in more detail in Paragraphs 12, 13 and 14 of this Answer.

11.

(a) Answering Paragraph VI(a) of said Petition, defendants admit the allegations contained in the first sentence thereof and allege that the facts therein stated are true of each Lower Basin State. Defendants are without information or belief as to the other allegations contained in said Paragraph VI(a), and placing their denial on that ground, deny said allegations.

(b) Answering Paragraph VI(b) of said Petition, defendants are without information or belief as to the allegations therein contained, and placing their denial on that ground, deny the allegations therein contained.

(c) Answering Paragraph VI(c) of said Petition, admit that the total present beneficial consumptive use (di-

versions less returns to the river) of water by the State of Nevada, measured at the place of use, does not exceed 63,730 acre-feet per annum as set forth in the table on page 12 of said Petition; except as expressly admitted, defendants are without information or belief as to the allegations contained in said Paragraph VI(c), including the tabulations appearing therein, and placing their denial on that ground, deny all other allegations of said paragraph.

12.

Answering Paragraph VII of said Petition:

(a) Deny, except as herein expressly admitted or alleged, all of the allegations of said paragraph.

(b) Allege that California has the right to make aggregate annual beneficial consumptive use in California, presently and permanently, of not to exceed 4,400,000 acre-feet of the waters apportioned to the Lower Basin by Article III(a) of the Colorado River Compact, plus one-half of all excess or surplus waters unapportioned by Article III(a) of the Colorado River Compact, including in said excess or surplus the waters referred to in Article III(b) of said Compact. Allege that the quantities of excess or surplus waters unapportioned by Article III(a) of the Colorado River Compact are such that the portion thereof which is now available and will continue to be available to California under its Statutory Compact with the United States for beneficial consumptive use in California is not less than one million acre-feet per annum.

(c) Admit that Arizona claims the right to the beneficial consumptive use of 3,800,000 acre-feet per annum of the waters referred to in Paragraphs (a) and (b) of

Article III of the Colorado River Compact. Allege that the claim of Arizona to 3,800,000 acre-feet of beneficial consumptive use per annum of the waters of the Colorado River System, measured in terms of "main stream depletion," is equivalent to more than 5,000,000 acre-feet measured at the place of use in terms of diversions less returns to the river.

(d) Admit that the Colorado River Compact apportioned to no Lower Basin State any definite amount of water. Admit that nothing in said Compact denies Nevada the right to the beneficial consumptive use of more than 300,000 acre-feet of water, and allege that nothing in said Compact or in any agreement to which California is a party confirms or concedes to Nevada the right to the use of said quantity or any other specific quantity.

(e) Allege that there is available to Arizona, Nevada, Utah and New Mexico in the aggregate the beneficial consumptive use in the Lower Basin of 3,100,000 acre-feet per annum of the waters of the Colorado River System, apportioned by Article III(a) of the Colorado River Compact, including, among others, the waters of the Gila River and its tributaries, plus one-half of the excess or surplus waters unapportioned by Article III(a) of that Compact, including in such excess or surplus waters unapportioned by Article III(a) of said Compact the increase of use permitted to the Lower Basin by Article III(b) of the Compact, said aggregate being subject to an undetermined deduction on account of reservoir and other losses, and such deductions as may be required in consequence of the Mexican Water Treaty. Allege that, of the beneficial consumptive use of water available in the aggregate to said four States of Nevada, Arizona,

Utah, and New Mexico, the share of each class which may be available to Nevada and the shares of each class which may be severally available to the other said States, have not been determined.

13.

Answering the allegations of Paragraph VIII of said Petition:

(a) Deny, except as herein expressly admitted or alleged, all of the allegations of said paragraph.

(b) Admit the allegations contained in the first sentence thereof.

(c) Allege that when, as and if the aggregate rights to the annual beneficial consumptive use in the Lower Basin exceed 7,500,000 acre-feet of water of the Colorado River System in any year, the first million acre-feet per annum of additional rights to the beneficial consumptive use in the Lower Basin in said year, wherever they may occur or be applicable, constitute rights to such use of water accruing to the Lower Basin states under Article III(b) of the Colorado River Compact, without further agreement or concerted action among the States of the Lower Basin.

(d) Allege that the right of the defendants to the beneficial consumptive use of water under the provisions of Article III(b) of the Colorado River Compact is established by the provisions of the Statutory Compact between the United States and California and the contracts of the defendants executed in accordance therewith and the appropriations of the defendants, as being a present and permanent right to the use of part of the excess and surplus referred to therein, if physically available.

14.

Answering the allegations of Paragraph IX of said Petition:

(a) Admit the allegations in the first sentence of said paragraph. Deny every other allegation of said paragraph except as such allegations conform to the allegations of Paragraphs 12 and 13 of this Answer.

(b) Allege that the share of all waters which may be available to Nevada cannot lawfully impair the rights of California under its Statutory Compact with the United States and contracts with California agencies made thereunder, as set out in Paragraph 34 of Defendants' Answer to Arizona's Bill of Complaint herein.

15.

Answering Paragraph X of said Petition:

(a) Deny all of the allegations of said paragraph except insofar as herein expressly admitted. Allege that the text of the California Limitation Act is fully set forth in Appendix 3.

(b) Deny that Article III(b) of the Colorado River Compact constitutes an apportionment of water to the Lower Basin, and allege that the uses of the waters referred to in said Article III(b) are unapportioned by the Colorado River Compact.

(c) Allege that the intent of the Congress and of the legislature of California in the enactment of the Statutory Compact between the United States and California was to make the waters referred to in Article III(b) of the Colorado River Compact available for use by California as a part of the excess or surplus waters the use of which is unapportioned by the Colorado River Compact,

and that Nevada, as a third party beneficiary of the Statutory Compact, is bound by the meaning thereof as so construed and applied by the principal parties thereto, to-wit, the United States and California, as alleged in the First Affirmative Defense of the Answer of Defendants to the Petition for Intervention of the United States.

16.

Answering Paragraph XI of said Petition, admit and allege as follows:

(a) Admit and allege that Section 4(a), Paragraph 1, of the Boulder Canyon Project Act offered a Statutory Compact to California, which California accepted, as described in Paragraph 6 of Defendants' Answer to the Petition for Intervention on Behalf of the United States. Admit that no specific mention is made in said Paragraph 1 of the waters referred to in Article III(b) of the Colorado River Compact, but allege that they are encompassed in the expression therein used, "excess or surplus waters unapportioned by" the Colorado River Compact.

(b) Admit that Section 4(a), Paragraph 2, of the Boulder Canyon Project Act consented to a proposed compact among Arizona, California and Nevada, but allege that Section 8(b) of said Act provided that if such compact should be entered into subsequent to January 1, 1929, it should require the further approval and consent of the Congress and should be subject to all contracts into which the Secretary of the Interior might have entered pursuant to Section 5 of the Project Act prior to the date of such approval and consent. Admit and allege that the language of the compact proposed in said Paragraph 2 of Section 4(a) made no mention of water

for California, Utah, or New Mexico, and like the first paragraph of that section, made no mention of the waters referred to in Article III(b) of the Colorado River Compact, except as the same are encompassed in the expression "excess or surplus waters unapportioned by the Colorado River compact," which appears in the second paragraph of Section 4(a) as in the first. Admit that the compact so conditionally authorized was directed to be subject to the Colorado River Compact.

(c) Admit that the compact proposed in the second paragraph of Section 4(a) was never entered into nor ratified by any State, and does not bind any State in any manner. Allege that in 1939 Arizona enacted a conditional ratification thereof which materially amended its language, to Arizona's advantage (see Defendants' Rejoinder to Arizona's Reply, Paragraph 2), and that no State has accepted Arizona's proposed amendment.

(d) Admit that any apportionment of water proposed in said Section 4(a), Paragraph 2, to be made to the States of Arizona and Nevada has never been consented to nor agreed to by the State of Nevada, and allege that no such apportionment to Arizona or Nevada had been agreed to by California.

17.

Answering the allegations of Paragraph XII of said Petition:

(a) Admit the allegations of Nevada contained in the first subparagraph thereof.

(b) Allege that the defendants have not sufficient information or belief to enable them to answer the second subparagraph thereof, and, basing their denial on that ground, deny the allegations therein.

18.

Answering Paragraph XIII of said Petition:

(a) Paragraph XIII(a) of said Petition does not appear to require answer by these defendants.

(b) Answering Paragraph XIII(b), deny the allegations therein contained except that defendants allege that the share of California in the waters referred to in Article III(b) of the Colorado River Compact has been determined by the Statutory Compact between the United States and California to which Arizona, Nevada, New Mexico and Utah have assented and that said waters are a portion of the excess or surplus waters the use of which is unapportioned by the Colorado River Compact.

19.

(a) Answering the allegations of Paragraph XIV of said Petition, deny, except as herein admitted or alleged, all the allegations of said paragraph.

(b) Admit that there is available to Arizona, Nevada, New Mexico and Utah the beneficial consumptive use of 3,100,000 acre-feet per annum of the uses apportioned to the Lower Basin by Article III(a) of the Colorado River Compact. As to the allegation that Nevada is entitled to the quantity of 539,100 acre-feet of water per annum apportioned to the Lower Basin by Article III(a) of the Compact, defendants allege that they have not sufficient information or belief to enable them to answer and, placing their denial on that ground, deny said allegation, and allege that the share which may be available for beneficial consumptive use in Nevada has not been determined. Such share is subject to the Statutory Compact between the United States and California and fur-

ther subject to all intervening rights since June 25, 1929, the effective date of the Statutory Compact and the Boulder Canyon Project Act.

(c) Admit that the beneficial consumptive uses of the waters of the Gila River and its tributaries in Arizona are to be charged to Arizona's uses in the Lower Basin under Article III(a) of the Colorado River Compact.

(d) Allege that California is entitled to the beneficial consumptive use of one-half of the excess or surplus waters unapportioned by Article III(a) of said Compact, including therein the uses referred to in Article III(b) of said Compact, and that there is available to the States of Arizona, Nevada, Utah and New Mexico, in the aggregate, the beneficial consumptive use of waters of the Colorado River System to the extent and in the manner described in Paragraphs 12 and 13 of this Answer, and not otherwise, and that the share thereof available to Nevada has not been determined except as affected by the provisions of the Statutory Compact between the United States and California.

20.

Answering the allegations contained in Paragraph XV of said Petition, admit all of said allegations.

21.

Answering the allegations contained in Paragraph XVI of said Petition, admit all of the allegations of said paragraph not herein denied. Deny the rights of Nevada in 3,800,000 acre-feet of water or any other quantity are as set forth in the Petition of Intervention of Nevada, and allege that the rights of Nevada are as set forth in Paragraphs 12, 13 and 14 of this Answer.

22.

Paragraph XVII of said Petition does not appear to require answer by these defendants.

23.

Answering Paragraph XVIII of said Petition, deny that the question in this controversy or their effect, measured in acre-feet per annum, are fully or accurately stated therein, and allege that the controversy, as developed in the pleadings to date, is summarized in Exhibit "A" annexed to Defendants' Answer to the Petition of Intervention on Behalf of the United States, and herein incorporated by reference as though fully stated.

24.

Paragraph XIX of said Petition does not appear to require answer by these defendants.

25.

(a) Paragraph XX(a) of said Petition does not appear to require answer by these defendants. The rights asserted by the defendants under the Statutory Compact between the United States and California are stated in Paragraph 27 of their Answer to Arizona's Bill of Complaint and Paragraph 6 of their Answer to the Petition for Intervention on Behalf of the United States.

(b) Paragraph XX(b) of said Petition does not appear to require answer by these defendants. Their position with respect to the status of the waters referred to in Article III(b) of the Colorado River Compact is stated in Paragraphs 12 and 13 of this Answer.

(c) Answering Paragraph XX(c) of said Petition, defendants allege that the right of Nevada to the waters of the Colorado River System not used by said State is

subject to intervening rights under the provisions of the Statutory Compact between the United States and California since June 25, 1929, the effective date thereof.

(d) Paragraph XX(d) of said Petition does not appear to require answer by these Defendants. Their rights to the use of waters in excess of or surplus to the uses apportioned by Article III(a) of the Colorado River Compact are stated in the First Affirmative Defense of their Answer to the Petition for Intervention of the United States, which is incorporated by reference in the First Affirmative Defense of this Answer.

26.

Answering the allegations of Paragraph XXI of said Petition, defendants admit that the economic interests of all the States of the Colorado River Basin are affected by this controversy.

27.

Paragraph XXII of said Petition does not appear to require answer by these defendants.

28.

Paragraph XXIII of said Petition does not appear to require answer by these defendants.

29.

Answering the allegations of Paragraph XXIV of said Petition:

(a) Admit the allegations contained in the first subparagraph thereof, and allege that the Compact referred to in Sections 8(a), 13(a), (b), (c) and (d) of the Boulder Canyon Project Act is the Six-State Compact proclaimed effective by the President June 25, 1929.

(b) Deny the allegations contained in the second subparagraph of Paragraph XXIV of said Petition, and allege that the rights of the defendants under their several contracts with the United States are as stated in the First Affirmative Defense of the Answer of these defendants to Arizona's Bill of Complaint and the First Affirmative Defense of their Answer to the Petition for Intervention of the United States.

(c) Admit the allegations, contained in the third subparagraph of Paragraph XXIV of said Petition, that Article III(a) of the Colorado River Compact makes no apportionment of any kind to any of the Lower Basin States and makes no apportionment whatever except as between the Upper and Lower Basin.

30.

Answering the allegations of Paragraph XXV of said Petition:

(a) Deny all of said allegations, and allege that the appropriative rights of each of the five States of the Lower Basin are material and relevant to the determination of their respective shares in the use of waters available to said five States in the aggregate.

(b) Allege that the rights of California to the use of the waters of the Colorado River System, to the extent that they constituted present perfected rights as of June 25, 1929, are within the protection of Article VIII of the Colorado River Compact, which provides that "present perfected rights to the beneficial use of waters of the Colorado River System are unimpaired by this compact," and directs that such rights shall attach to and be satisfied from water that may be stored not in conflict with Article III; and within the protection of Section 6 of the

Boulder Canyon Project Act, which directs that the dam and reservoir provided for by Section 1 of said Act (Hoover Dam and reservoir) shall be used "first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of Article VIII of said Colorado River compact; and third, for power."

(c) Allege that the defendants as of June 25, 1929, were vested with valid appropriative rights as stated in the Third Affirmative Defense contained in the Answer of the defendants to the Bill of Complaint of Arizona and as summarized in Paragraph 46 of that Answer. Defendants incorporate by reference Paragraph 5 of the present Answer to Nevada's Petition of Intervention.

31.

Defendants deny all allegations contained in the Petition of Intervention of Nevada not specifically admitted in this Answer or which are at variance with the allegations contained in this Answer.

Prayer.

Wherefore, defendants pray:

1. That the rights and interests of defendants as against all parties to this cause be adjudged and decreed as alleged in their Answer to the Bill of Complaint of Arizona, in their Answer to the Petition of Intervention of the United States, and their Answer to the Petition of Intervention of the State of Nevada;

2. That the Court grant to the defendants such other and further relief as to the Court may seem meet and proper.

3. That in consequence of the disagreement of the parties on complex questions of fact and law; this Court appoint some suitable person as Special Master and refer this cause to such Special Master with authority to take evidence and to report the same to the Court with his findings of fact, conclusions of law and recommendations for decree, all to be subject to review and approval or other disposal by this Court.

The defendants also respectfully pray leave to amend this Answer if that should hereafter become appropriate or necessary in the course of the proceedings in this cause.

Respectfully submitted,

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